

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln No.:	10/728,743)	Confirmation No. 2233
)	
Filed:	December 4, 2003)	<u>VIA EFS WEB E-EFILING</u>
)	<u>on February 10, 2009</u>
Applicant:	Andrew J. Szabo)	
)	
Title:	Graphic user interface for database system)	
)	
Art Unit:	3998)	
)	
Examiner:	Steven Sax)	
)	
Attorney Dkt:	93988)	
)	
Customer No.:	22242)	

Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

**PETITION FOR REVIVAL OF ABANDONED APPLICATION FOR UNAVOIDABLE
DELAY UNDER 37 CFR 1.137(a) AND IN THE ALTERNATIVE TO WITHDRAW
HOLDING OF ABANDONMENT UNDER 37 CFR 1.181**

Sir:

We hereby petition under 37 C.F.R. § 1.137(a) for revival of the above identified application for unavoidable delay. The Commissioner is hereby authorized to charge our Deposit Account 06-1135 in the amount of \$540.00 (large entity) for the Petition Fee under 37 C.F.R. § 1.17(l) to revive an unavoidably abandoned application. In the alternative, we petition to withdraw the decision to find the application abandoned under 37 C.F.R. § 1.181.

Background

According to the record for this application, the PTO issued a Notice of Non-Compliant Amendment on October 8, 2008 ("Notice") in response to an amendment

filed August 28, 2008. The Examiner recently called previous counsel for this case, and notified counsel that the case had gone abandoned for failure to respond to the Notice.

Counsel of Record at the Time Never Received the Notice

As an initial matter, the undersigned attorney's law firm only recently assumed responsibility of the above application. It appears from the face of the Notice, no mailing information is available, and therefore, we cannot tell to whom the Notice was sent or whether the Notice was ever mailed. Milde & Hoffberg L.L.P. was counsel of record at the time the Notice issued. A declaration of Steven Hoffberg of Milde & Hoffberg L.L.P. is co-filed in support of this petition explaining previous counsel's docketing procedures and that counsel never received the Notice. For these reasons, we request a favorable decision on the petition to revive under 37 C.F.R. §1.137(a).

By Rule, the Application is Not Yet Abandoned

In addition, the record indicates that the August 28, 2008 Amendment, which is the subject of the Notice, was filed ultimately in response to a Non-Final Rejection. PAIR indicates the following history for this application:

<u>Date</u>	<u>Action</u>
November 16, 2007	Non-Final Rejection
February 15, 2008	Amendment
June 16, 2008	Notice of Non-Compliant Amendment
July 16, 2008	Amendment
August 28, 2008	Supplemental Amendment
October 8, 2008	Notice of Non-Complaint Amendment

In view of this history, the August 28, 2008 amendment considered to be non-compliant was filed ultimately in response to the November 16, 2007 Non-Final Office Action. Indeed, the Notice of Abandonment indicates that the August 28, 2008 amendment is in response to a non-final action. Because the amendment is in response to a non-final action, extensions of time are available to respond to the Notice. See the Notice, which states "Extensions of time are available under 37 CFR 1.136(a)

only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.” (Emphasis in original.) Because the Notice issued October 8, 2008, extensions should be available up to and including April 8, 2009.

With extensions still available, this application should not be considered abandoned. Therefore, we request that the holding of abandonment be withdrawn in accordance with 37 C.F.R. §1.181 and the fees associated with the petition to revive under 37 C.F.R. §1.137(a) be refunded.

A response to the notice of non-compliant amendment mailed October 8, 2008 is co-filed. Because the application by rule is not yet abandoned, we hereby petition under 37 C.F.R. §1.136(a) for a four-month extension of time in the above-identified application, up to and including February 10, 2009, to make this reply timely.

Conclusion

Counsel did not receive the Notice that led to the current holding of abandonment, thereby rendering the abandonment to be unavoidable. Also, because extensions of time are available to respond to the Notice, the holding of abandonment should be withdrawn, the Petition fees refunded, and the co-filed response and petition for extension of time be entered.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

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Dated: February 10, 2009

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